

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX APPLICATION No 77 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME-TAX

Versus

NIRMALA BAKUBHAI FOUNDATION

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Appearance:

MR MANISH R BHATT for Petitioner  
MR RK PATEL for Respondent No. 1

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CORAM : MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE A.R.DAVE

Date of decision: 24/12/97

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The applicant proposes the following questions  
for calling for the statement of case under Section  
256(2) of the Income Tax Act.

1. "Whether the Appellate Tribunal is right in law

and on facts in confirming the order passed by the CIT (A) cancelling the penalty levied under Section 271(1)(c) of the Act?"

2. "Whether the Appellate Tribunal is right in law and on facts in directing the A.O to allow benefit of Section 11 of the Act and other consequential benefits to the assessee?"

The Tribunal noted that the penalty proceedings under Section 271(1)(c) of the Act were initiated because the assessee had claimed that an amount of Rs. 6,62,232/- which was incurred by it for the purchase of moveable assets from the B.M Institute should be treated as an application of income. The CIT (Appeals) had, in the assessee's case, already held on 21.8.91 in ITA No. 484/AHD/88 that this amount should be treated as an application of income and cancelled the penalty levy. The Tribunal confirmed the order of the Appellate authority by holding that since the quantum appeal was decided in favour of the assessee, the penalty order cannot be sustained. We are satisfied that the order of the Tribunal confirming the order of the CIT (Appeals), was justified, because the penalty order cannot stand in view of the fact that the quantum appeal came to be decided in favour of the assessee. The penalty levied under Section 271(1)(c) of the Act was therefore, rightly cancelled and no question of law arises for determination by this Court. This application is rejected and rule is discharged with no order as to costs.

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\*/Mohandas